

### **292.330 Registration of broker-dealers, agents, and investment advisers.**

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless the person is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:
  - (a) The person is so registered under this chapter;
  - (b) The person is registered as a broker-dealer under this chapter; or
  - (c) The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256.
- (2) It is unlawful for any covered adviser to transact business in this state unless:
  - (a) The person has made a notice filing with the executive director consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the executive director by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;
  - (b) The person is registered as a broker-dealer under this chapter;
  - (c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or
  - (d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the executive director unless the investment adviser representative is registered under this chapter.

- (3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the executive director or the executive director's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).
  - (a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.
  - (b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or

performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.

- (c) The registration application shall contain whatever information the executive director requires concerning such matters as:
  - 1. The applicant's form and place of organization;
  - 2. The applicant's proposed method of doing business;
  - 3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;
  - 4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
  - 5. The applicant's financial condition and history.
- (4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:
  - (a) The executive director may specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
  - (b) The executive director may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
  - (c) The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the executive director notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.
- (5) The executive director may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.
- (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.

- (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.
- (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the executive director may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the executive director by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The executive director may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.
  - (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the executive director or the executive director's designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the executive director or the executive director's designee.
  - (b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the executive director or the executive director's designee.
- (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the executive director or the executive director's designee prior to the expiration thereof an application containing the

information the executive director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the executive director or the executive director's designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the executive director or the executive director's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the executive director may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.

- (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.
- (b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.
- (12) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the executive director by rule prescribes. All records required shall be preserved for three (3) years unless the executive director by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the executive director, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.
- (b) Every registered broker-dealer and investment adviser shall file such reports as the executive director by rule prescribes. If a broker-dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting

requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.

- (c) If the information contained in any document filed with the executive director or the executive director's designee is or becomes inaccurate or incomplete in any material respect, the broker-dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.
  - (d) The executive director may make periodic examinations, within or without this state, of each broker-dealer, firm employing issuer agents, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker-dealer, firm employing issuer agents, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, firm employing issuer agents, or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the executive director by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.
  - (e) The executive director may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.
  - (f) The executive director may prescribe rules for the conduct of business by broker-dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.
  - (g) The executive director may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the executive director be provided power to reduce duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The executive director may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The executive director may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.
- (13) (a) The executive director may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser

representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

1. Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
2. Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;
3. Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;
4. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
5. Is the subject of an order of the executive director denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;
6. Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:
  - a. An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;
  - b. An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;
  - c. A United States Postal Service fraud order;
  - d. A cease and desist or other administrative order entered after notice and opportunity for hearing by the executive director, the securities agency or administrator of another state, or a Canadian

province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or

- e. An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;
- 7. Has engaged in dishonest or unethical practices in the securities business;
- 8. Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the executive director may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;
- 9. Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the executive director may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:
  - a. Has failed reasonably to supervise his agents if he is a broker-dealer or his employees or investment adviser representatives if he is an investment adviser; or
  - b. Has failed to pay the proper filing fee; but the executive director may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected; or
- 10. Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.

The executive director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.

- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
  - 1. The executive director may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;

2. The executive director may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
  3. The executive director may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
  4. The executive director shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;
  5. The executive director shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;
  6. The executive director may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The executive director may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the executive director that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the executive director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the executive director, the order will remain in effect until it is modified or vacated by the executive director. If a hearing is requested or ordered, the executive director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.



- (d) If the executive director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the executive director may by order cancel the registration or application.
  - (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the executive director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the executive director by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the executive director may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the executive director; the withdrawal or termination is effective upon receipt by the executive director of the notice.
  - (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.
- (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The executive director may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the executive director deems necessary and appropriate in the public interest or for the protection of investors and the executive director may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

**Effective:** July 15, 2002

**History:** Amended 2002 Ky. Acts ch. 230, sec. 37, effective July 15, 2002. -- Amended 2000 Ky. Acts ch. 157, sec. 14, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 20, sec. 5, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 165, sec. 5,

effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 141, sec. 85, effective July 1, 1982; ch. 266, sec. 7, effective July 15, 1982; and ch. 346, sec. 2, effective July 15, 1982. -- Amended 1972 Ky. Acts ch. 265, sec. 3. -- Created 1960 Ky. Acts ch. 110, sec. 2, effective January 1, 1961.

**Legislative Research Commission Note.** This section was amended by three 1982 Acts. The amendments in two of the Acts were not in conflict and have been compiled together. The amendment in ch. 346, sec. 2 and in ch. 266, sec. 7 are partially in conflict in subsection (10) in regard to the amount of fees. The amendment in ch. 346, sec. 2, prevails as the later enactment.

**Legislative Research Commission Note (6/20/2005).** 2005 Ky. Acts chs. 11, 85, 95, 97, 98, 99, 123, and 181 instruct the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in 2005 legislation confirming the reorganization of the executive branch. Such a correction has been made in this section.